



6-814

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Ned McDaniel
County Attorney
Wichita County
Wichita Falls, Texas

Dear Sir:

Opinion No. 0-814

- Re: 1. May a deputy county clerk also be a Notary Public?
2. May a court reporter also be a deputy county clerk?
3. May a court reporter also be a Notary Public?

Your request for opinion has been received by this department. We have restated your questions as above shown. We quote from your letter as follows:

"The commissioners court of Wichita County has employed a court reporter for the county court and for convenience, she was appointed deputy county clerk in order that she might, in addition to her services as court reporter, carry out the provisions of Article 2349 in keeping the minutes of the commissioners court. She also does stenographic work for the delinquent tax department and various officers of the county. As deputy county clerk, by special order entered by the commissioners court in approving the appointment, she receives no pay as such deputy, but is paid instead from the Officers Salary Fund, from the general fund of the county. As you can see, the appointment and service as deputy county clerk are incidental to the other duties and services mentioned. Would she be disqualified to accept the appointment and act as notary public?"

Article 18, Section 40, Constitution of Texas, as amended, on November 8, 1932, provides as follows:

"No person shall hold or exercise, at the same time, more than one civil office of

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emolument, except that of justice of the peace, county commissioner, notary public, and postmaster, officer of the National Guards, the National Guard Reserve, and the Officers' Reserve Corps of the United States, and enlisted men of the National Guard, the National Guard Reserve and the organized reserves of the United States, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer, or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers' Reserve Corps of the United States from holding in conjunction with such office any other office or position of honor, trust or profit, under this state of the United States."

We quote from 34 Tex. Jur., Section 18, page 351, as follows:

"As is the rule at common law, the same person cannot hold two incompatible offices. Acceptance of and qualification for an office incompatible with one already held is a resignation or vacation of the office held, regardless of whether both are offices of emolument within the meaning of the Constitution. Offices are incompatible where their duties are or may be inconsistent or conflict, but not where their duties are wholly unrelated, or in no manner inconsistent and are never in conflict and where neither officer is accountable or under the dominion of, or subordinate to, the other, or has any right or power to interfere with the other in the performance of any duty . . ."

On April 27, 1931, this department held, in an opinion by Hon. Everett F. Johnson, Assistant Attorney General, that the office of county clerk is incompatible with the office of notary public and that a person holding the office of county clerk could not at the same time hold the office of notary public. We enclose herewith a copy of this opinion.

The case of Donges vs. Beall et al, 41 S. W. (2) 531, holds that a deputy county clerk is a public officer.

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Article 1938, Revised Civil Statutes of Texas, provides that county clerks may in writing, appoint one or more deputies under his hand and the seal of his court, which shall be recorded in the office of such clerk, shall be deposited in the office of the district clerk, and that deputies shall take the official oath, shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person.

In answer to your first question, you are respectfully advised that it is the opinion of this department that the offices of deputy county clerk and notary public are incompatible. Therefore, one could not serve as deputy county clerk and notary public at the same time.

In order to pass on your second and third questions we would need more facts. Please send us a copy of the order appointing the court reporter, a copy of her official oath, if any, and give us all the facts surrounding her appointment and qualification. Also please send us your brief upon this question.

We regret very much our delay in answering your request for opinion. It appears, however, that our difficulty has been occasioned by lack of sufficient facts to pass upon your second and third questions.

Upon receipt of this information and your brief we will be glad to pass on these questions.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*
Wm. J. Fanning
Assistant

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APPROVED OCT 23, 1939

Gerard B. Mann
ATTORNEY GENERAL OF TEXAS

